Supreme Court, U.S.
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No. 01-434

In the Supreme Court of the United States

FRANK TAYLOR, JR.
Respondent

Versus

TRANSOCEAN TERMINAL OPERATORS, INC.
Petitioner

ON PETITION FOR A WRIT OF CERTIORARI TO THE LOUISIANA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI ON BEHALF OF TRANSOCEAN TERMINAL OPERATORS, INC. Petitioner

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QUESTION PRESENTED

1.

Did the Louisiana Fourth Circuit Court of Appeal erroneously conclude that there is an intentional tort exception to the employer's tort immunity under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901, *et seq.*, thereby allowing the plaintiff, Frank Taylor, to pursue a cause of action in tort against his longshore employer, Transocean Terminal Operators, Inc., and did the Louisiana Supreme Court err in refusing to consider and reverse that ruling?

CORPORATE DISCLOSURE STATEMENT

Petitioner, Transocean Terminal Operators, Inc., is wholly owned by Gulf Services Inc., which is not a publicly traded entity.

TABLE OF CONTENTS

QUESTION PRESENTED i

CORPORATE DISCLOSURE STATEMENT ii

TABLE OF AUTHORITIES v
- Cases v
- Statutes - Federal vii
- Statutes - State vii
- Court Rules vii
- Other vii

CITATIONS TO OPINIONS AND ORDERS OF LOWER COURTS 1

STATEMENT REGARDING JURISDICTION 1

STATUTES AT ISSUE 1

STATEMENT OF THE CASE 2

ARGUMENT 5
- Background 5
- This Court Should Preserve the Integrity of LHWCA 9
- This Court Has Jurisdiction To Consider the Judgment Below 9
- TTO Enjoys Tort Immunity under the Longshore Act 15
- LHWCA Does Not Provide For Intentional Tort Exception to Employer's Tort Immunity 17

No Authority for Abrogating
Tort Immunity Under the Longshore Act 19
Proposed Intentional Tort Exception is Contrary
to Express Provisions of the Longshore Act.....25
Remedies Under Longshore Act Encompass
Injuries Resulting From Intentional Acts
by Co-Employees.....26

CONCLUSION 29

APPENDICES:

Appendix A: Denial by Louisiana Supreme
Court of Transocean Terminal Operators,
Inc.'s Writ of Certiorari and/or Review A-1

Appendix B: Decision and Order of Court
of Appeal, Fourth Circuit, State of Louisiana A-2

Appendix C: Judgment of Civil District
Court for the Parish of Orleans, State of Louisiana....A-11

TABLE OF AUTHORITIES

Cases

Austin v. Johns-Manville Sales Corp., 508 F. Supp. 313 (D. Me. 1981) 22

Cox Broadcasting Corporation v. Cohn, 420 U.S. 469, 95 S. Ct. 1029, 43 L.Ed.2d 328 (1975).....10,11,12,13

Gauthe v. Asbestos Corp. Ltd., 708 So. 2d 761 (La. App. 5th Cir. 1998), *writ denied*, 749 So. 2d 666 (La.1999) 24

Hall v. Equitable Shipyard, Inc., 670 So. 2d 543 (La. App. 4th Cir. 1996).....17

Hetzel v. Bethlehm Steel Corp., 50 F. 3d 360 (5th Cir. 1995) 26

Houston v. Bechtel Assoc. Professional Corp., 522 F. Supp. 1094 (D.D.C. 1981) 20,21

Howlett v. Birkdale Shipping Co., S.A., 512 U.S. 92, 114 S. Ct. 2057, 2062 (1994) 17

Jefferson v. Alabama, 522 U.S. 75, 118 S.Ct. 481, 139 L.Ed.2d 433 (1997) 10

LeSassier v. Chevron USA, Inc., 776 F. 2d 506 (5th Cir. 1985) 16

Levene v. Pintail Enter., Inc., 943 F. 2d 528 (5th Cir. 1991) 25

Malbrough v. Halliburton Logging Services, Inc., 710 So. 2d 1149 (La. App. 1st Cir.); *writ denied*, 720 So. 2d 1217 (La. 1998) 22,23,24

Mercantile National Bank v. Langdeau, 371 U.S. 555, 83 S.Ct. 520, 9 L.Ed.2d, 523 (1963) 13,14

Penker Const. Co. v. Cardillo, 118 F. 2d 14 (D.C. Cir. 1941) 27,28

Radio Station WOW, Inc. v. Johnson, 326 U.S. 120, 65 S.Ct. 1475, 89 L.Ed. 2092 (1945).....11

Robin v. Sun Oil Co., 548 F. 2d 554 (5th Cir. 1977) 17

Sharp v. Elkins, 616 F. Supp. 1561 (W.D. La. 1985) 17,24,25,26,27

Southern Pac. Co. v. Sheppard, 112 F. 2d 147 (5thCir. 1940).....28

Taylor v. Transocean Terminal Operators, Inc., 2000-0604 (La. App. 4 Cir. 3/14/01), 785 So. 2d 860 (La. App. 4thCir.), *writ denied*, 2001-1057 (La. 6/15/01),__So. 2d__, 2001 WL 708852 1,4,18,25,26

Texas Employers' Ins. Assoc. v. Jackson, 820 F. 2d 1406 (5th Cir. 1987) 16

Thomas v. Newton Intern. Enterprises, 42 F. 3d 1266 (9th Cir. 1994) 17

Washington Metropolitan Area Transit Authority v. Johnson, 467 U.S. 925, 104 S. Ct. 2827 (1984).....6

Webb v. Shell Offshore, Inc., 557 So. 2d 276 (La. App. 4th Cir. 1990) 17

Statutes - Federal

28 U.S.C. § 1257 .....1,9,10, 14

33 U.S.C. 904(b) 6

33 U.S.C. § 901, *et seq*.....i,3,5

33 U.S.C. § 902 (3) 15,23,27

33 U.S.C. § 903 15,16

33 U.S.C. § 905(a).....1,6,16,23,25

33 U.S.C. § 905(b).....16

33 U.S.C. § 933(i).....2,6,17,25

Statutes- State

La. Rev.Stat. § 23:1032 18

Court Rules

Rule 10(c) of the Rules of the Supreme Court of the United States.....9

Other

Black's Law Dictionary (7th Ed.).....21

Larson, Workmen's Compensation Law 20,21

CITATIONS TO OPINIONS AND ORDERS OF LOWER COURTS

Taylor v. Transocean Terminal Operators, Inc., 2000-0604 (La. App. 4 Cir. 3/14/01), 785 So. 2d 860 (La. App. 4th Cir.), *writ denied*, 2001-1057 (La. 6/15/01),__So. 2d __, (La. 2001) 2001 WL 708852.

STATEMENT REGARDING JURISDICTION

Transocean Terminal Operators, Inc. ("TTO") applies for a Writ of Certiorari to review and overrule the judgment of the Louisiana Fourth Circuit Court of Appeal rendered on March 14,2001. TTO appealed that ruling to the Louisiana Supreme Court, which denied TTO's request for a writ of certiorari and/or review on June 15, 2001. This application for a Writ of Certiorari pursuant to this Court's jurisdiction under 28 U.S.C. § 1257.

STATUTES AT ISSUE

33 U.S.C. § 905(a)

The liability of an employer prescribed in section 904 of this title shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or his legal representative in case death results

from the injury, may elect to claim compensation under the chapter, or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of his employment, or that the injury was due to the contributory negligence of the employee. For purposes of this subsection, a contractor shall be deemed the employer of a subcontractor's employees only if the subcontractor fails to secure the payment of compensation as required by section 904 of this title.

33 U.S.C. § 933(i)

The right to compensation or benefits under this chapter shall be the exclusive remedy to an employee when he is injured, or to his eligible survivors or legal representatives if he is killed, by the negligence or wrong of any other person or persons in the same employ: Provided, That this provision shall not affect the liability of a person other than an officer or employee of the employer.

STATEMENT OF THE CASE

In this case, a Louisiana state appellate court has undertaken to enact federal law, ignoring the clear intent of Congress, and departing from the long-recognized application of a federal statute. Transocean Terminal Operators, Inc. (hereinafter "TTO") was the longshore employer of Frank Taylor, Jr. (hereinafter "Taylor"), the plaintiff in the proceedings below. On April 13, 1999, Taylor filed a Petition for Damages in the Civil District Court for the

Parish of Orleans, State of Louisiana, wherein he asserted a cause of action **in tort** against TTO as a result of being stabbed by a co-worker on March 15, 1999. Taylor sought tort damages from TTO as a result of the stabbing, in addition to the compensation benefits he has already received under the applicable workers' compensation law.

TTO responded with a Peremptory Exception of No Cause of Action, filed on the basis that the governing law, namely the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901, *et seq.* (hereinafter the "Longshore Act" or "LHWCA"), bars Taylor's tort claim against TTO, and that there is no statutory or judicial exception to TTO's tort immunity. The district court, the Honorable Gerald P. Fedoroff presiding, properly sustained TTO's Exception. A Judgment was entered on August 19, 1999, dismissing Taylor's tort suit with prejudice.(A-11)

Taylor appealed the district court's ruling to the Louisiana Fourth Circuit Court of Appeal, arguing that (1) an exception to the employer's tort immunity under the Longshore Act should apply in the case of an intentional tort by a co-employee and (2) TTO should be held vicariously liable in tort for the intentional act of that co-employee. On March 14, 2001, a three judge panel of the Louisiana Fourth Circuit Court of Appeal vacated the district court's judgment granting TTO's Exception of No Cause of Action and remanded the case for further proceedings.(A-2) The holding by the Fourth Circuit was not founded on any legal precedent, and its recognition that an intentional tort exception can be judicially carved out of the Longshore Act was based only on **dicta** from a handful of cases from various non-binding state and federal opinions.

TTO timely filed an application for writ of certiorari and review to the Louisiana Supreme Court, seeking a reversal of the Louisiana Fourth Circuit's decision, which would in effect reinstate the judgment of the district court, dismissing this action entirely. In a five to two vote, the Louisiana Supreme Court denied TTO's writ application on June 15, 2001.(A-1) The issue of whether there exists an intentional tort exception to a longshore employer's tort immunity in the case of an alleged intentional tort by one longshoreman against another was, therefore, never addressed by the Louisiana's Supreme Court.

Given the history of this case, the Louisiana intermediate appellate court's decision in *Taylor v. Transocean Terminal Operators, Inc.*, 785 So. 2d 860 (La. App. 4th Cir. 2001) is the only reported opinion of which TTO is aware that holds that an intentional tort exception can be applied in cases arising under the Longshore Act to allow a longshore employee to sue his employer for tort damages. Such a departure from the express protective provisions of the Longshore Act has never before been recognized.

Unlike certain state workers' compensation statutes, **the LHWCA does not include an intentional tort exception to the employer's tort immunity.** To the contrary, the Longshore Act contains express and unequivocal provisions recognizing that an employee's **exclusive** remedy against a longshore employer is the recovery of benefits under the Act and that the **sole** liability of the longshore employer to its injured or ill employees is for compensation and medical benefits. The Longshore Act carefully balances the remedies and protections afforded to employees and employers alike.

However, this balance will be perilously disrupted if the holding of the Louisiana Fourth Circuit Court of Appeal is allowed to stand.

TTO now seeks review by this Court in order that the express immunity provisions of the Longshore Act can be restored. Unless corrected by this Court, the ruling by the Louisiana Fourth Circuit Court of Appeal will seriously undermine the Longshore Act's exclusivity provisions, as prescribed by Congress, and will cause material injustice to TTO and countless other longshore employers by judicially expanding the remedies to longshore workers, which were neither intended nor authorized by Congress.

ARGUMENT

Background:

This litigation arises out of the stabbing of Taylor by a fellow employee on March 15, 1999 when arriving at a work site to begin work with TTO. It is undisputed that Taylor was a longshoreman and that TTO was his longshore employer when Taylor was assaulted. It is further undisputed that the Longshore Act, 33 U.S.C. § 901, *et seq,* governs the rights and obligations of both Taylor and TTO.

The Longshore Act does not permit an employee to recover, or even assert a claim for, tort damages against his employer. The employee's remedy is the recovery of medical and compensation benefits, as provided for under the specific provisions of the LHWCA. The employer has to pay these benefits irrespective of fault, and in exchange the

employer enjoys complete tort immunity. 33 .U.S.C. 904(b); *Washington Metropolitan Area Transit Authority v. Johnson,* 467 U.S. 925, 931,104 S. Ct. 2827, 2831 (1984).

The Longshore Act specifically provides that **the liability of an employer shall be exclusive and in place of all other liability of such employer to the employee.** 33 U.S.C. § 905(a)*(emphasis supplied).* The Longshore Act also contains the following express provision regarding the limitations on an employee's remedies as against his employer:

> The right to compensation or benefits under this Chapter **shall be the exclusive remedy to an employee when he is injured ... by the negligence or wrong of any other person or personsin the same employ:** Provided, That this provision shall not affect the liability of a person other than an officer or employee of the employer.

33 U.S.C. § 933(i)*(emphasis supplied).*

In an attempt to circumvent these remedial restrictions mandated by Congress, Taylor commenced this litigation by filing a Petition for Damages in the Civil District Court for the Parish of Orleans, State of Louisiana, wherein he alleged a cause of action in tort against his employer, TTO.[1] Taylor claims he should be allowed to pursue a tort claim against his longshore employer under a proposed "intentional tort" exception to the Longshore Act's exclusivity provisions. TTO filed an Exception of No Cause of

[1] In separate proceedings, Taylor has filed a claim for and received statutory benefits under the Longshore Act.

Action, given that neither the Longshore Act nor the jurisprudence interpreting it provides authority for such an exception. The district court sustained TTO's Exception and dismissed Taylor's suit, with prejudice. Judgment was rendered August 19, 1999.(A-11)

Thereafter, Taylor appealed to the Louisiana Fourth Circuit Court of Appeal. The Fourth Circuit issued its opinion on March 14, 2001, vacating the district court's granting of TTO's Exception of No Cause of Action and remanding the case for further proceedings.(A-2)

The Louisiana Fourth Circuit Court of Appeal, entirely ignoring the plain language enacted by Congress, erroneously concluded that courts have judicially carved out an exception to the Longshore Act's exclusive remedy provisions. In support of this proposition, the Fourth Circuit relied on pure *dicta* contained in a handful of cases from a few federal district and state appellate courts. However, the court below cited no authority which expressly recognizes an intentional tort exception to the Longshore Act. The reason for this is quite simple: No such exception exists under the Longshore Act, and no court has ever held an employer liable in tort damages to its employee under such a theory of liability.

Moreover, the exception discussed in the cases relied upon by the court below relates to intentional torts committed by *an employer,* generally in the context of employment conditions or surroundings in which the employer requires its employees to work. No court (until the Louisiana Fourth Circuit rendered its decision below) even hinted

at the possibility of holding a longshore employer liable for an intentional criminal act of violence by one worker against his fellow employee. Such an act could never reasonably be considered an intentional tort by *the employer.* Consequently, the specious intentional tort "exception" adopted by the Louisiana Fourth Circuit would be inapplicable to the facts of this case. Taylor's allegations do not relate to an intentional tort by TTO, but rather stem from an alleged intentional criminal act committed against Taylor by his co-worker.

Taylor has argued that vicarious liability principles should be stretched to impute his co-employee's tort liability for an intentional tort to his employer. There exists no legal basis for this novel proposition. The Fourth Circuit made no ruling on that issue, notwithstanding the arguments set forth by Taylor and TTO in their briefs and at oral argument in the proceedings below. However, this Court can and should address this issue and reach the inevitable conclusion that Taylor has no cause of action in tort against TTO under the facts and circumstances alleged in his Petition and the applicable law.

Given the ramifications of the ruling of the Louisiana intermediate appellate court, this matter must be resolved by this Court. If allowed to stand, the Louisiana Fourth Circuit Court of Appeal's ruling will have long term adverse effects on TTO and other longshore employers and will open the door to an entirely new and unchartered liability exposure which has historically been shielded by the plain language of the Longshore Act and the jurisprudence properly interpreting that body of law.

This Court Should Preserve the Integrity of LHWCA:

This Honorable Court should exercise its powers under Rule 10(c) of the Rules of the Supreme Court of the United States to preserve the exclusive remedy provisions expressly enacted by Congress, but which have been ignored by the Louisiana Fourth Circuit Court of Appeal. That court's ruling has raised an important issue of federal law which has not previously been addressed by this or any other Court. The Louisiana appellate court's ruling is inconsistent with the express language of the Longshore Act and is in derogation of longshore employers' statutory rights.

This Court Has Jurisdiction To Consider the Judgment Below:

The United States Congress has dictated the circumstances under which this Court may review the decision of a state court which impinges upon a statute of the United States. The United States Code, at 28 U.S.C. § 1257, reads in pertinent part:

§ 1257. State Courts; *Certiorari*

> Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court by *Writ Of Certiorari* where the validity of a treaty or statute of the United States is drawn in question, or where the validity of a statute of any state is drawn

> in question on the grounds of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is especially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

Pursuant to this statute, this Court has consistently held that in order to be reviewable, a state court judgment must be final in two senses. First, it must be subject to no further review or correction in any other state tribunal. Secondly, it must constitute the effective determination of the litigation, not of merely interlocutory or intermediate steps therein. *Jefferson v. Alabama,* 522 U.S. 75, 118 S.Ct. 481, 139 L.Ed.2d 433 (1997).

The judgment that TTO is asking this Court to review is admittedly interlocutory. However, it fits squarely within well-established exceptions to 28 U.S.C.A. §1257 created by this Court, allowing review of state court decisions where matters are still pending below. This Court has recognized circumstances under which it will consider a state court decision final for purposes of exercising its jurisdiction where the highest court of a state has finally determined a federal issue, even though proceedings were ongoing at the state level, including a pending trial.

In Cox *Broadcasting Corporation v. Cohn,* 420 U.S. 469, 95 S. Ct. 1029, 43 L.Ed.2d 328 (1975), this Court articulated four (4) categories of cases in which the decision of a state court is considered final for purposes of §1257. In Cox,

the Court held that it had jurisdiction of the appeal of a state court decision regarding civil liability and sanctions imposed for alleged First and Fourteenth Amendment activities. *Id.* The case arose when the father of a deceased rape victim brought an action against the broadcasting company for invasion of the father's right to privacy, occasioned by the broadcasting company publishing the name of the rape victim. *Id.* The trial court granted summary judgment in favor of the father, but the Georgia Supreme Court reversed and remanded the case back to the trial court for further proceedings. *Id.*

In determining that it had jurisdiction over the matter, the Cox court stated that "in most, if not all, the cases in these categories, these additional proceedings would not require the decision of other federal questions that might also require review by the Court at a later date, and immediate rather than delayed review would be the best way to avoid 'the mischief of economic waste and of delayed justice.'" *Id.* at 476, 1036, citing *Radio Station WOW, Inc. v. Johnson,* 326 U.S. 120,124, 65 S.Ct. 1475, 1478, 89 L.Ed. 2092 (1945).

The present case falls squarely in line with the policy considerations articulated by this Court in Cox. This case does not contain any other federal questions for review by this Court at a later date, and immediate review would be the most effective way of avoiding enormous economic waste and delayed justice, by requiring this case to proceed to trial. Immediate review should foster efficiency both in this case and the cases that will be spawned by the judicial activism it represents.

The first category of cases articulated in *Cox* contemplates cases in which further proceedings are scheduled in the state court, but the already decided federal issue is conclusive where it causes the outcome of further proceedings to be pre-determined for all practical purposes. In this category, the judgment of the state court on the federal issue is often considered final because the case has essentially been determined by that decision.

The second category involves a federal issue which has been finally decided by the state's highest court, and which remains at issue regardless of the outcome of the pending state court proceedings.

The third category identified by the *Cox* Court anticipates "no situations where the federal claim has been finally decided, with further proceedings on the merits in the state courts to come, but in which later review of the federal issue cannot be had, whatever the ultimate outcome of the case. *Id.* at 480, 1038.

The final category identified in Cox embodies those cases where the party seeking review of the state court decision might prevail on the merits in the pending state court proceedings on non-federal grounds. Such an occurrence would obviously preclude review of the federal issue by this Court. Importantly, this category also requires that reversal of the state court decision on the federal issue would cease any further litigation. *Id.* at 482, 1040.

The facts of this case mirror the second and fourth

categories recognized by the *Cox* Court and compel this Court to consider the important federal question presented here. Immediate, rather than delayed review is the only way to preclude the economic waste and delayed justice that would be caused by allowing the decision below to stand.

The fourth category discussed in *Cox*, and the one most applicable to the present case, involved the situation where the party seeking review had a possibility of prevailing on the merits on non-federal grounds, obviating the necessity of review of the federal issue by the Supreme Court, and where reversal of the state court decision on the federal issue would preclude any further litigation on the relevant cause of action. This Court made a point of mentioning the driving policy behind this exception to the finality rule, when it stated:

> "A refusal immediately to review the state court decision might seriously erode federal policy, the court has entertained and decided the federal issue, which itself has been finally determined by the state courts for the purpose of the state litigation.

Cox, at 420 U.S. 469, 482, 95 S.Ct. 1029, 1040. The same situation exists here, where the Louisiana Supreme Court refused to review the erroneous ruling of the Louisiana Fourth Circuit.

This Court considered an analogous fact situation in *Mercantile National Bank v. Langdeau,* 371 U.S. 555, 83 S.Ct. 520, 9 L.Ed.2d, 523 (1963). In *Langdeau,* suit was

brought against two national banks in Travis County, Texas. The banks relied on a federal venue statute which precluded suit being brought against them in Travis County. They argued that suit would properly be brought against them in a different county. While acknowledging that the banks might be able to prevail on the merits of the case in the pending state court proceedings, this Court exercised its jurisdiction because it considered the venue "issue as a separate and independent matter, anterior to the merits and not enmeshed in the factual and legal issues comprising the plaintiff's cause of action." *Langdeau* at 558, 83 S.Ct. at 522. The Court logically reasoned that it would be counterproductive to allow lengthy and complex litigation to unfold in the courts of Travis County to only later vacate any decision because venue was improper. Instead, the Court chose to consider the venue question which might preclude further litigation in Travis County before the state court proceedings proceeded.

Here, all of the requisite elements articulated by the *Cox* Court are met. Any argument to this Court that the case should not be considered final for purposes of §1257 until after all of the proceedings in the state court are concluded should fail under the reasoning espoused by this Court in *Langdeau.* Primarily, a failure to immediately resolve the federal issue decided by a Louisiana state court would seriously erode the federal policy embodied in the Longshore Act. Secondly, because the plain language and intent of Congress enunciated in the Longshore Act has been eviscerated with tacit approval by the Louisiana Supreme Court, the federal issued presented in this case is, for all purposes, final.

Additionally, reversal of the state court's decision of the federal issue in this matter would absolutely preclude any further litigation against TTO. Any attempt by respondent to delay this Court's review of this issue of first impression would cause undue confusion throughout the state and federal courts trying to apply the LHWCA nationally. More importantly to TTO, a failure by this Court to immediately exercise its jurisdiction would subject TTO to lengthy, complex and expensive litigation which may be entirely unnecessary if this Court decides that the Louisiana appellate courts are subverting the clear language and intent of the Longshore Act. This Court should exercise its jurisdiction and correct the ruling of the Louisiana appellate courts, which contradict the congressional intent underlying the Longshore Act.

TTO Enjoys Tort Immunity under the Longshore Act:

By rendering its decision, the Louisiana Fourth Circuit Court of Appeal enacted an intentional tort exception to an employer's tort immunity under the Longshore Act, engaging in the worst form of judicial activism in contravention of Congressional intent. As a longshoreman employed by TTO, Taylor does not contest that his claim is governed by the Longshore Act. 33 U.S.C. § 902 (3); 33 U.S.C. § 903.

Under the Act, employers such as TTO are legally required to provide compensation and medical benefits to their employees, such as Taylor, who become injured or ill during the course and scope of employment. The Longshore Act also provides that the liability of a covered employer to

provide the specified compensation and medical benefits to its injured or ill workers **shall be exclusive and in place of all other liability** of such employer to the employee. 33 U.S.C. § 905(a) *(emphasis added).*[2] The exclusivity provisions of the LHWCA are to be read broadly so as to protect employers from liability under state laws or other causes of action. *Texas Employers' Ins. Assoc. v. Jackson,* 820 F. 2d 1406, 1414 (5th Cir. 1987), *rev'd on other grounds,* 862 F. 2d 491 (5th Cir. 1988), *cert. denied,* 490 U.S. 1035, 109 S. Ct. 1932 (1989), *citing LeSassier v. Chevron USA, Inc.,* 776 F. 2d 506 (5th Cir. 1985).

Under the carefully worded language of the Longshore Act, workers enjoy the protection of guaranteed entitlement to compensation benefits if injured or ill as a result of their own fault[3] and even if the employer is free from fault. But in exchange for this vested remedy, longshore employees are restricted from pursuing alternative legal actions against an employer. The limitations on the longshore employee's remedies against his employer are set forth at Section 933(i) of the Longshore Act, which states:

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[2] TTO acknowledges that the LHWCA allows a longshoreman to sue his employer for damages for injury or death resulting from *vessel negligence.* 33 U.S.C. § 905(b). There is no dispute that Taylor's claim does **not** arise out of vessel negligence.

[3] The LHWCA includes an express prohibition of an employee's entitlement to benefits in situations where an injury (or death) results from the employee's intoxication or the employee's intention to injure or kill himself or another. 33 U.S.C. § 903(c).

> The right to compensation or benefits under this Charter **shall be the exclusive remedy to an employee when he is injured ... by the negligence or wrong of any other person in the same employ:** Provided, That this provision shall not affect the liability of a person other than an officer or employee of the employer.

33 U.S.C. § 933(i) *(emphasis added)*. Notably, the term "wrong" in 33 U.S.C. 933(i) has been specifically interpreted to encompass intentional or willful torts. *Sharp v. Elkins,* 616 F. Supp. 1561, 1564 (W.D. La. 1985). Therefore, Taylor's sole remedy against TTO for his alleged injury, resulting from the intentional, criminal tort committed by his co-worker, would be his entitlement to compensation and medical benefits under the Act. Taylor has received compensation and medical benefits from TTO in connection with this incident and is limited to those benefits.

LHWCA Does Not Provide For Intentional Tort Exception to Employer's Tort Immunity:

Courts have long recognized that the **exclusive** remedy for an employee against his employer is workers' compensation benefits under the LHWCA because **the Longshore Act bars all common law tort actions against the employer.** *Howlett v. Birkdale Shipping* Co., *S.A.*, 512 U.S. 92, 114 S. Ct. 2057, 2062 (1994); *Thomas v. Newton Intern. Enterprises,* 42 F. 3d 1266, 1267 (9th Cir. 1994); *Robin v. Sun Oil Co.,* 548 F. 2d 554, 556 (5th Cir. 1977); *Hall v. Equitable Shipyard, Inc.,* 670 So. 2d 543, 545 (La. App. 4th Cir. 1996); *Webb v. Shell Offshore, Inc.,* 557 So. 2d

276, 277 (La. App. 4th Cir. 1990) *(emphasis added).* In contrast, employers who are governed by state workers' compensation laws are often not afforded such broad protections from tort liability. For example, under La. Rev.Stat. § 23:1032, relied upon by the Louisiana Fourth Circuit in its opinion below, an employer can be held liable for an intentional tort under Louisiana law. The LHWCA has no such statutory exception to an employer's immunity from tort liability, and the Fourth Circuit's consideration of the judicially recognized principles derived from Louisiana's state workers' compensation laws was wholly misplaced. Ironically, the Louisiana Fourth Circuit Court of Appeal recognized that the LHWCA does not include an intentional tort exception. *Taylor,* 785 So. 2d at 862.(A-5,7) Nonetheless, that court dismissed the absence of such an exception as a "complicating factor" and judicially created an exception with the Louisiana workers' compensation statute as a guide.(A-5,10) The end result was that Louisiana's Fourth Circuit Court of Appeal did what the United States Congress opted not to do in enacting the LHWCA: it added an intentional tort exception to the employer's tort immunity.

By vacating and remanding this case, the Louisiana Fourth Circuit Court of Appeal has also done what no other court has done in the seventy-four year history of the LHWCA — allow a longshoreman injured by the intentional criminal act of a co-worker to sue his employer in tort for his injuries. This Court must not allow this judicial expansionism and allow Louisiana to be the only jurisdiction in the nation to allow such a claim to proceed. The Longshore Act, which governs the rights and remedies of Taylor and

TTO, does not provide any exceptions which would allow Taylor to recover tort damages in this case. TTO calls upon this Court to restore the rights and protections afforded to both employees and their employers as enacted by Congress. No sound reason or authority exists to sanction the judicially created remedy embraced by the Louisiana intermediate appellate court and allowed to stand by the Louisiana Supreme Court.

No Authority for Abrogating Tort Immunity Under the Longshore Act:

Neither the Fourth Circuit nor Taylor has cited any case in which a court has held that an intentional tort exception can be applied to defeat the Congressionally mandated immunity afforded employers under the LHWCA. Taylor's argument below and the Louisiana Fourth Circuit's holding are based solely on a handful of opinions from a few federal district and Louisiana appellate courts which contain mere **dicta** suggestive of a potential exception to an employer's tort immunity in the situation of an intentional tort committed **by the employer** against the employee. However, a careful reading of those cases reveals that there has never before been an intentional tort exception applied to the employer's tort immunity under the Longshore Act. A plain reading of the cases relied on by Taylor below and cited in the Fourth Circuit's opinion shows that the comments regarding the supposed intentional tort exception were made only in discussion of workers' compensation liabilities in general.

By tracing the isolated remarks in each of those cases to their original source, it is revealed that the proposi-

tion that "there is an intentional tort exception to employer immunity" originated in a workers' compensation treatise, which did not even pertain specifically to the Longshore Act! All of the authorities which purportedly support Taylor's argument and the Fourth Circuit's holding cite to Larson, Workmen's Compensation Law, or to cases which in turn cite to Larson. Not a single case relied upon by the Fourth Circuit involved or applied an intentional tort exception to a longshore employer's tort immunity. The comments in those cases addressing an intentional tort exception had their origin in a text book discussion of generic workers' compensation law principles. While Larson's work is certainly a respected treatise, it does not focus on the Longshore Act in its consideration of exclusive remedy issues, but on more liberal state workers' compensation statutes.

The distinction between the LHWCA and those state workers' compensation acts that allow tort actions for intentional torts is significant and reflects markedly different remedies under the varying bodies of workers' compensation law. The cases cited by Taylor and the Fourth Circuit recognized this distinction and consequently upheld the clear language of the LHWCA to ensure employer tort immunity in situations where an intentional tort by a longshore employer had been alleged.

For example, in *Houston v. Bechtel Assoc. Professional Corp.*, 522 F. Supp. 1094 (D.D.C. 1981), the plaintiff was an LHWCA covered employee. He filed a tort action against his employer alleging willful, wanton, reckless and unlawful misconduct in exposing him to unreason-

ably high levels of silica dust. He sought, in addition to his compensation remedy, general tort and punitive damages. The court dismissed the plaintiff's tort claims and his claim for punitive damages. In doing so, the district court recognized that the LHWCA precluded the plaintiff from maintaining a tort action against his employer, including a tort action based on willful[4] misconduct. The court went on to comment as follows:

> The overwhelming weight of authority is that "the common law of liability of the employer cannot be stretched to include accidental injuries caused by the gross, wanton, willful, deliberate, **intentional,** reckless, culpable or malicious negligence, breach of statute or other misconduct short of genuine intentional injury."

Houston, 522 F. Supp at. 1096, quoting 2A Larson, Workmen's Compensation Law, § 68.13 at 13-5. *(emphasis added)*

The *Houston* court also explained that the plaintiff's reliance on West Virginia's Worker's Compensation Act was misplaced, because that state act expressly allows tort actions against an employer when a worker is injured as a result of the employer's "deliberate intention." *Houston, 522* F. Supp. at 1097. The court expressly noted that the LHWCA contains no such exemption from its exclusivity provisions. *Id.* The *Houston* court's comments concerning a

---

4 The term "willful" is synonymous with "intentional." See definitions of intentional tort and willful, Black's Law Dictionary, (7th Ed.) pp. 1497, 1593.

possible intentional tort exception to an employer's tort immunity was addressed in the context of workers' compensation laws in general, and the West Virginia Compensation Act in particular, and not the Longshore and Harbor Workers' Compensation Act. There is no intentional tort exception to an employer's tort immunity under the Longshore Act.

Similarly, the case *of Austin v. Johns-Manville Sales Corp.*, 508 F. Supp. 313 (D. Me. 1981) involved a suit that was dismissed due to the tort immunity provisions of the LHWCA. That case also included the same quote from Larson's workers' compensation treatise commenting on exceptions to wworkers' compensation laws in general, but not the LHWCA. *Austin*, 508 F. Supp. at 316. *Austin* does not hold that longshore employers can be held liable for intentional torts. Yet, the Louisiana Fourth Circuit and Taylor have latched on to the recurring quote that originated in Larson's workers' compensation treatise, rather than the holdings and rationale of the cited cases, to reach the erroneous conclusion that there is an intentional tort exception under the Longshore Act. But importantly, **none** of those authorities held that such an exception exists under the Longshore Act.

The state court cases cited by Taylor and the Fourth Circuit likewise fail to hold that a worker covered by the Longshore Act can sue his employer in tort. *Malbrough v. Halliburton Logging Services, Inc.*, 710 So. 2d 1149 (La. App. 1st Cir.); *writ denied*, 720 So. 2d 1217 (La. 1998), involved a longshoreman seeking tort damages for the alleged intentional act of his co-employee, in which the

court did **not** conclude that the longshore employer could be held liable for tort damages. Rather, the court held that the co-employee was not shielded from tort liability under the Longshore Act for his alleged intentional tort.[5] *Malbrough* does **not** hold that a longshore employer is liable for the intentional tort of one employee against another.

The *Malbrough* case actually supports the district court's ruling below that Taylor has no cause of action against TTO for the alleged intentional tort committed by Taylor's co-employee. In discussing the remedies available to a longshoreman, the *Malbrough* court noted:

> There is a distinction in terms of coverage of the LHWCA depending on whether the employer or the employee committed the intentional tort. 33 U.S.C. § 902(2) defines "injury"to include any injury caused by the "willful act of a third person." Since the employer could not qualify as a "third person," an intentional tort committed by the employer would fall outside the scope of the LHWCA coverage. **However, if the employee is considered as a "third person," an intentional tort could fall under the scope of the LHWCA, thereby triggering the employer's immunity from suit under § 905(a).** We do not believe, however, that the fact the injury may be covered from the employer's perspective precludes an employee from suing his fellow employee for an intentional tort.

[5] Although the plaintiff sought to recover damages from his employer also, his tort claims were voluntarily dismissed when the employer asserted the exclusivity provisions of the LHWCA. The plaintiff received benefits under the Longshore Act and not the tort damages he originally claimed.

Malbrough, 710 So. 2d at 1153, n. 2 *(emphasis added)*. Courts have considered co-employees to be "third persons" in the context of the Longshore Act, and therefore can be held liable for intentional injuries they inflict on their fellow employees while the employer would be obligated to provide LHWCA benefits only. *See Sharp*, 616 F. Supp. at 1565-66. Although not directly at issue, the *Sharp* court indicated that an injury caused by the intentional tort of a fellow worker would trigger an employer's obligation to provide compensation benefits under the Longshore Act, rather than tort liability. *Sharp*, 616 F. Supp. at 1566.

The case of *Gauthe v. Asbestos Corp. Ltd.*, 708 So. 2d 761 (La. App. 5th Cir. 1998), *writ denied*, 749 So. 2d 666 (La. 1999) affirmed the **dismissal** of the plaintiffs' intentional tort wrongful death action. The court did not recognize an intentional tort exception under the Longshore Act, but merely commented that the district court was of the opinion that the plaintiffs would have an intentional tort cause of action under the Louisiana Workers' Compensation Act or the LHWCA. *Gauthe*, 708 So. 2d at 762. However, there was no cited authority for the district court's belief regarding the possibility of intentional tort cause of action under the LHWCA.

Clearly, the Louisiana Fourth Circuit was in error in concluding that the *dicta* in the cited cases established an exception to a longshore employer's tort immunity. There is no authority which allows a longshore worker to circumvent his employer's statutorily mandated tort immunity in order to pursue a tort remedy against the employer.

Proposed Intentional Tort Exception is Contrary to Express Provisions of the Longshore Act:

In rendering its decision, the Fourth Circuit commented that "[a]lthough the LHWCA does not have a specific provision expressly creating an employer intentional tort exception for its exclusive remedy provision, the case law carving out that exception is not inconsistent with the LHWCA." *See Taylor,* 785 So. 2d at 863.(A-7) The Louisiana appellate court's impression is simply wrong and violates the federal law enacted by Congress.

An intentional tort exception would be plainly contradictory to Section 905 (a) of the Longshore Act, which provides that the liability of an employer governed by the Act **"shall be exclusive and in place of all other liability of such employer to the employee...."** 33 U.S.C. § 905 (a)*(emphasis added).* The exception would also be contrary to Section 933 which states:

> The right to compensation or benefits under this Act **shall be the exclusive remedy to an employee** when he is injured ... by the negligence or wrong of any other person in the same employ...
>
> 33 U.S.C. § 933(i) *(emphasis added).*[6]

Congress defined the parameters of an employer's liability and an employee's remedies in express and unequivocal language. As stated *in Levene v. Pintail Enter., Inc.,* 943 F. 2d 528, 531 (5th Cir. 1991), the LHWCA

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[6] As explained, supra, the term "wrong" in 33 U.S.C. § 933 (i) includes intentional and willful torts. *Sharp v. Elkins,* 661 F. Supp. 1561, 1564 (W.D. La. 1985).

"absolutely bars suit for all other acts taken in the capacity as the employer of the injured worker." The Congressional policy underlying the LHWCA would be totally abandoned if an injured worker were allowed to sue the employer in tort for damages in addition to the statutory benefits provided for under the Act. *Hetzel v. Bethlehm Steel Corp.*, 50 F. 3d 360, 366 (5th Cir. 1995). The exclusivity of the employer's liability as defined within the framework of the LHWCA leaves no room for a more expansive judicially created liability. Similarly, the employee's rights and remedies are statutorily recognized and limited.

The Longshore Act, which strikes a careful balance between the protections afforded employers and the rights enjoyed by employees, irrespective of fault, would be wholly abrogated if parties were allowed to go beyond the statutory framework and assert causes of action (or defenses) developed by the common law. The plain language of the LHWCA makes clear that Congress did not intend to give either the employer or the employee rights or remedies greater than those set forth in the Act.

Remedies Under Longshore Act Encompass Injuries Resulting From Intentional Acts by Co- Employees.

In its discussion of the *Sharp* case, which addressed a potential gap in coverage under the Act in cases involving an intentional tort by an employer, the Fourth Circuit mistakenly applied a strained interpretation of the term "injury" so as not to include within the meaning of that term an injury caused by an intentional act of another. *Taylor,* 785 So. 2d at 863.(A-7,8) However, the full definition of "injury", as

expressly set forth in the Longshore Act, includes "an injury caused by the **willful**[7] **act** of a third person directed against an employee because of his employment." 33 U.S.C. § 902(2) *(emphasis added).* Importantly, the term "third person" has been found to apply to a **fellow employee** under Section 902(2) of the LHWCA. *Sharp v. Elkins,* 616 F. Supp. 1561, 1565-66 (W.D. La. 1985). Hence, the Act's remedies and protections are triggered even when one is purposely injured by another, **including a co-employee,** if the attack was employment-related, the exact scenario alleged here by Taylor.

Contrary to the conclusion reached by the appellate court below, *Sharp* does not stand for the proposition that a longshoreman can sue his employer in tort for an alleged intentional tort. *Sharp* recognizes that an employee's entitlement to LHWCA benefits and the employer's immunity from tort liability arise in those situations where a worker is purposely or intentionally injured by a coworker. The worker's injury does not have to result from the merely accidental or negligent act of another in order for him to receive statutory benefits. It would be patently unfair to deprive an employee or the employer of their statutory protections merely because the worker was intentionally harmed by another in connection with his employment.

The court in *Penker Const. Co. v. Cardillo,* 118 F. 2d 14 (D. C. Cir. 1941) also recognized that a work-related assault against an employee by a co-worker makes the employee's injury compensable under the LHWCA rather than creating tort liability for the employer. The *Penker* court held:

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[7] As pointed out at footnote 4, the term "willfull" is synonymous with "intentional."

> An assault by a stranger, and *a fortiori* by a fellow employee, clearly arises out of the employment where, as here, the employment provides the motive for the assault....
>
> The finding that "the employment ... was responsible for the assault" is equivalent to a finding that the injury was "caused by the willful act of a third person directed against an employee because of his employment." The [Longshore Act] makes such an injury compensable.

Penker, 118 F. 2d at 15 *(internal citations and footnotes omitted).* Also, in the case of *Southern Pac. Co. v. Sheppard,* 112 F. 2d 147 (5th Cir. 1940), the U.S. Fifth Circuit Court of Appeals held that a claim arising out of an employee's death as a result of a work-related fight was governed by the LHWCA. Consequently, the employer was liable for statutory benefits, not tort damages.

CONCLUSION

The United States Congress has spoken on the issue of a longshore employer's obligations and liabilities, and the LHWCA and the jurisprudence interpreting it provide that in exchange for an employer's obligation to provide statutory compensation and medical benefits to its injured workers, it is immune from tort liability - - even if an employee is injured intentionally at the hands of a fellow-worker. The ruling of the Louisiana Fourth Circuit Court of Appeal, allowed to stand by the Louisiana Supreme Court, has the effect of judicially enacting new law. As a longshoreman, Taylor's remedies can be found only within the Longshore Act. There exists no legal authority that would give Taylor a more expansive remedy in this case. The Louisiana Fourth Circuit Court of Appeal clearly erred in creating such an expanded remedy. The Fourth Circuit's application of dicta to create an exception to a longshore employer's tort immunity when no court has done so before must not be allowed to stand. It is judicial activism at its worst.

TTO respectfully urges this Court to uphold the intent of Congress and binding judicial authorities, which recognize the well settled rule that an employer is entitled to tort immunity under the Longshore Act, and overrule and reverse the March 14, 2001 decision of the Louisiana Fourth Circuit Court of Appeal, allowed to stand by the Louisiana Supreme Court.

Respectfully submitted,

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APPENDIX A

The Supreme Court of the State of Louisiana

FRANK TAYLOR, JR.

VS. NO. 2001-C-1057

TRANSOCEAN TERMINAL OPERATORS, INC.

- - - - - -

IN RE: Transocean Terminal Operators Inc.; - Defendant; Applying for Writ of Certiorari and/or Review, Parish of Orleans, Civil District Court Div. E, Nos. 99-6043; to the Court of Appeal, Fourth Circuit, No. 2000-CA-0604

- - - - - -

June 15, 2001

Denied.

PCC
PFC
CDK
JTK
RLL

VICTORY, J., would grant the writ.
TRAYLOR, J., would grant the writ.

Supreme Court of Louisiana
June 15, 2001
/s/ Katherine A. Fontana

Deputy Clerk of Court
For the Court

APPENDIX B

FRANK TAYLOR, JR.	*	No. 2000-CA-0604
VERSUS	*	COURT OF APPEAL
TRANSOCEAN TERMINAL OPERATORS., INC.	*	FOURTH CIRCUIT
NO. 2000-CA-0604	*	STATE OF LOUISIANA

* * * * * * * *

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 99-6043, DIVISION "E-9"
Honorable Gerald P. Fedoroff, Judge

JOAN BERNARD ARMSTRONG

JUDGE

* * * * * *

(Court composed of Judge Joan Bernard Armstrong,
Judge Charles R. Jones and
Judge Terri F. Love)

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MAR 14 2001

VACATED AND REMANDED.

This is a personal injury case. The plaintiff, who is a longshoreman, was stabbed while at work, by a fellow employee. The plaintiff alleges that the stabbing was work-related, i.e. within the course and scope of his and the fellow-employee's employment, and that, therefore, his employer is vicariously liable. The defendant employer argues that, under the "exclusive remedy" provision of the Longshoreman and Harbor Worker's Compensation Act ("LHWCA"), 33 U.S.C. § 901 et. seq., its only liability is for compensation benefits and the plaintiff cannot sue the defendant employer in tort. The plaintiff responds that, because he is alleging an intentional tort', the exclusive remedy provision of the LHWCA is not applicable.

The defendant employer filed a peremptory exception of no cause of action. The trial court, evidently agreeing with the defendant employer's position as to the

applicability of the exclusive remedy provision of the LHWCA, maintained the exception of no cause of action and dismissed the plaintiffs suit. The plaintiff then brought the present appeal. Because we agree with the considerable body of case law which states that the exclusive remedy provision of the LHWCA is not applicable to an intentional tort by (or attributable to) an employer, and in light of the apparent absence of any case law to the contrary we will vacate the judgment of the trial court and remand for further proceedings. Of course, we express no opinion as to the ultimate merits of the plaintiff's underlying case. We hold only that the plaintiff has stated a cause of action. In order to prevail, the plaintiff will still have to prove that the defendant employer is vicariously liable for the intentional tort of Bobby Young.

Plaintiff Frank Taylor was a Longshoreman. He was employed by defendant Transocean Terminal Operators, Inc. ("Transocean"). Mr. Taylor alleges that, while at work, he was stabbed by Bobby Young, who was another of Transocean's employees. Mr. Taylor also alleges that the stabbing occurred within the course and scope of his employment and Bobby Young's employment, as a result of an employment-related altercation, so that the defendant is vicariously liable for the stabbing.

The issue presented on appeal is a purely legal one: In the case of an intentional tort by (or attributable to) the employer, is the "exclusive remedy" provision of the LHWCA, 11 U.S.C. §905, applicable so that the employee may recover only compensation benefits and is barred from

bringing a tort action against the employer?[1]

The notion that a claim for an intentional tort committed by an employer is an exception to a statutory exclusive remedy compensation scheme is familiar in the context of Louisiana's worker's compensation law. Louisiana's worker's compensation statute provides that it does not affect the liability of the employer for civil liability resulting from an intentional act. La. R.S. 23:1032.B. Thus, it has been held that an intentional tort by an employer is not subject to the "exclusive remedy" provision of Louisiana's worker's compensation law and may give rise to a tort action by the employee against the employer. See, e.g., Bazley v. Tortorich, 397 So.2d 475 (La. 1981). This is typical of state worker's compensation laws. Bazley, 397 So-2d at 480 (citing 2A Larson, The Law of Workmen's Compensation §§68-69 (1976).

The complicating factor with respect to the LHWCA is that the LHWCA does not have a specific provision expressly stating that an employer's intentional tort is an exception to the statute's "exclusive remedy" provision. Nevertheless, over the last twenty years, a number of court decisions, from Louisiana and from other jurisdictions, have stated that an employer's intentional tort is an exception to the exclusive remedy provision of the LHWCA and that, in such cases, the employee may bring a tort action against the

---

[1] There is also a readily apparent issue of whether the stabbing by fellow employee Bobby Young may be attributed, under a theory of vicarious liability, to the defendant employer. For reasons we explain later in this opinion, we do not decide the vicarious liability issue in this appeal; we leave it to be addressed by the trial court on remand.

employer, The decisions so stating included recent ones from Louisiana's First and Fifth Circuit Courts of Appeal. See Marlbrough v. Halliburton Logging Services, Inc., 97-0378 (La. App. 1 Cir. 4/8/98), 710 So.2d 1149, 1152; Gauthe v. Asbestos Corp., 97-941 (La. App. 5 Cir. 1/27/98), 708 So.2d 761. Other decisions so stating include ones from the federal district courts for the Eastern and Western Districts of Louisiana. See Johnson v. ODECO Oil & Gas Co., 679 F. Supp. 604, 606-607 (E.D. La. 1987); Sharp v. Elkins, 616 F. Supp. 1561, 1565 (W.D. La. 1985).

The position that an intentional tort presents an exception to the exclusive remedy provision of the LHWCA is not new. Two cases so stated at least twenty years ago. See Austin v. Johns-Manville Sales Corp., 508 F. Supp. 313, 316 (D. Me. 1981); Houston v. Bechtel Associates, 522 F. Supp. 1094, 1096 (D. D. C. 1981). See also Espadron v. Baker-Hughes. Inc., 97-1951 (La. App. 4 Cir. 4/22/98) 714 So. 2d 60, 62 (plaintiff, while entitled to LHWCA compensation benefits "may not bring a claim against [his employer] for non-intentional tort. 33 U.S.C. §905". In contrast to this line of case law, we have been cited no cases holding that the LHWCA's exclusive remedy provision applies to an employer's intentional tort.

Transocean's response to all of the cases on point is to argue that the statements of those cases, that an employer's intentional tort constitutes an exception to the LHWCA's exclusive remedy provision, are all "dicta". Transocean bases its argument upon the fact that, in each of the cases in which the issue of employer tort liability for intentional tort was squarely presented, the court ultimately

determined that the conduct sued upon did not constitute an intentional tort but, instead, constituted negligence or some level of culpability less than an intentional tort. However, a review of those decisions compels the conclusion that the pronouncements in those cases are not mere "dicta". The courts' opinions make clear that each adopted the position that an intentional tort constitutes an exception to the LHWCA's exclusive remedy provision prior to turning to the issue of whether there was, in fact, an intentional tort present in the cases before them. If they had considered the LHWCA's exclusive remedy provisions to be applicable even to cases of employer intentional torts, then they would not have had any need to go on to decide whether there was, in fact, an intentional tort. The fact that, in each case, the courts found that there was no intentional tort simply reflects how strictly they applied the exception for intentional torts. See, e.g., Austin, 508 F. Supp. at 316 ("Nothing short of a specific intent to injure the employee falls outside of the scope of the [LHWCA]".); Johnson, 679 F. Supp. at 606-607 (willful and wanton misconduct not sufficient to make exception applicable). in any event, even if we were to accept the characterization of these decisions as "dicta", it would certainly be a substantial and uniform body of dicta including decisions both local and national, both state and federal, both recent and long-established and, perhaps most strikingly, apparently uncontradicted by any other case law.

Although the LHWCA does not have a specific provision expressly creating an employer intentional tort exception for its exclusive remedy provision, the case law carving out that exception is not inconsistent with LHWCA. As explained in the Sharp decision, 616 F, Supp. at 1565-66,

the LHWCA covers, and thus provides compensation benefits for, "injuries" caused by accidents, by occupational disease and by the willful acts of third persons. 33 U.S.C § 902 (2) (definition of injury").

> Accordingly, if an employer commits a willful act against its employee, then the injury to the employee apparently has not been caused by a "third person", is not accidental and, thus, not compensable under the [LHWCA]. Under this rationale, an intentional tort exception, such as the one found in Houston and Austin, supra, is appropriate, otherwise an injured employee would be left without a remedy because of the exclusivity provision of § 905 (a) and no workmen's compensation remedy because the injury would not come under any existing definition.

Sharp, 616 F. Supp. at 1566. In other words, because the LHWCA provides benefits only for injuries caused by (1) accidents, (2) occupational disease and (3) willful acts of third persons (and "third persons" does not include employers), and an intentional tort by an employer fits none of those three categories, the LHWCA does not provide any benefits for injuries caused by an intentional tort by an employer. Because the LHWCA's benefit provisions do not apply to employer intentional torts either. As the Sharp court suggests, because the LHWCA does not provide benefits for injuries caused by an employer intentional tort, application of the LHWCA's exclusive remedy provision to bar an employee tort action in the case of an employer intentional tort would result in the employee having no remedy at all in

the case of an employer intentional tort, in either tort or compensation under the LHWCA–a result that we cannot believe that Congress would have so intended in enacting the LHWCA.

As we have noted above, it is typical of the worker's compensation schemes of various jurisdictions that, in the case of an employer intentional tort, the employee is not limited to compensation benefits but, instead, has a right to sue in tort. There is an "almost universal practice of differentiating between intentional and unintentional harms, prevalent in most workers' compensation programs". Bazley, 397 So.2d at 481. See also ZA Larson. The Law of Workmen's Compensation §§ 68-69 (1976).

The LHWCA is, apart from its special federal maritime law nature, "a typical worker's compensation system". Northeast Marine Terminal Co v. Caputo, 432 U.S. 249, 258 (1977). In particular, the LHWCA embodies the heart of the worker's compensation "bargain": The employee receives the certainty of a specified benefit but foregoes a tort action and the employer incurs liability for the specified benefit but avoids the risk of a tort action. See WMATA v. Johnson, 467 U.S. 925, 931-32 (1984) (discussing LHWCA). However, the worker's compensation "bargain" typically does not include an employer intentional tort. "Universally, harmful conduct is considered more reprehensible if intentional" so that "[t]here is a definite tendency to impose greater responsibility upon a defendant whose conduct has been intended to do harm or morally wrong,". Bazley, 397 So.2d at 480. Thus, the understanding of the LHWCA that we have adopted in this present appeal is, not only in concert with the

views of the various courts to have considered the matter over the last 20 years, but is in accord with the mainstream of worker's compensation law. Consequently, we believe that our understanding most likely comports with the intent of Congress in enacting the LHWCA.

Lastly, we note that there is a readily apparent issue, mentioned in the briefs, of whether the employer in this case can be held liable in tort, under a theory of vicarious liability, for the stabbing of the plaintiff by employee Bobby Young. Put another way, was the stabbing by employee Bobby Young an intentional tort of the employer? The legal standard under Louisiana law (or federal law if applicable) for holding an employer vicariously liable for a stabbing by an employee, and the facts and circumstances which must be present for such a tort to be so attributable to the employer, are not addressed in the briefs on appeal and, apparently, were not a focus of the proceedings in the trial court. Consequently, we will not address that issue in this appeal but leave it for development on remand.

For the foregoing reasons, we vacate the judgment of trial court and remand for further proceedings.

VACATED AND REMANDED.

APPENDIX C

CIVIL DISTRICT COURT FOR THE
PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 99-6043 DIVISION " E " SECTION 9

FRANK TAYLOR, JR.

VERSUS

TRANSOCEAN TERMINAL OPERATORS, INC.

FILED:_____ _____
DEPUTY CLERK

JUDGMENT

This cause came before the Court for hearing on the exception of No Cause of Action filed by defendant, Transocean Terminal Operators, Inc. on the 13th day of August, 1999, and the Court considering the Exception to be well founded under the law.

IT IS ORDERED, ADJUDGED AND DECREED that the Exception of No Cause of Action be and it is hereby sustained and the plaintiffs suit dismissed Plaintiffs costs.

Judgment read, rendered and signed this 19 day of Aug., 1999 at New Orleans, Louisiana.

/s/ Gerald P. Fedoroff
JUDGE

Amber Darby
Deputy Clerk

Supreme Court, U.S.
FILED
OCT 10 2001
OFFICE OF THE CLERK

No. 01-434

IN THE

Supreme Court of the United States

TRANSOCEAN TERMINAL OPERATORS, INC.,

Petitioner,

v.

FRANK TAYLOR, JR.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE LOUISIANA FOURTH COURT OF APPEAL

BRIEF OF SIGNAL MUTUAL INDEMNITY ASSOCIATION LTD. AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

Page

Table of Cited Authorities ii

Interest of Amicus Curiae 1

Summary of Argument 3

Argument 5

I. An Intentional Injury Inflicted By A Longshoreman Against A Co-Employee Is Compensable Under The LHWCA 5

II. A Claim That One Longshoreman Injured A Co-Employee Is Not A Claim Of Intentional Injury By The LHWCA Employer And Is Within The Immunity Granted To The Employer By The LHWCA 12

Conclusion 16

Appendix — List of Members of Signal Mutual Indemnity Association Ltd, Effective October 5, 2001 ..... 1a

TABLE OF CITED AUTHORITIES

Page

Cases:

Austin v. Johns-Manville Sales Corp., 508 F. Supp. 313 (D. Me. 1981) 14

Bazley v. Tortorich, 397 So. 2d 475 (La. 1981) 14

Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975) 2

Daniels v. Swofford, 286 S.E.2d 582 (N.C. App. 1982) 15, 16

Davis v. Department of Labor and Indus. of Washington, 317 U.S. 249 (1942) 6

Dillon's Case, 324 Mass. 102, 85 N.E.2d 69 (1949) 8

Hartford Accident & Indem. Co. v. Cardillo, 72 App. D.C. 52, 112 F.2d 11, *cert. denied*, 310 U.S. 649 (1940) 8

Houston v. Bechtel Assocs. Professional Corp., 522 F. Supp. 1094 (D.D.C. 1981) 14

Jackson v. Frisard, 685 So. 2d 622 (La. App.), *writ denied*, 689 So. 2d 1386 (La. 1997), and *writ denied*, 689 So. 2d 1387 (La. 1997) 11

Cited Authorities

	Page
Johnson v. Odeco Oil & Gas Co., Inc., 679 F. Supp. 604 (E.D. La. 1987), *aff'd*, 864 F.2d 40 (5th Cir. 1989)	14
Kielczewski v. Washington Post Co., 8 Ben. Rev. Bd. Serv. 428 (1978)	9
Malbrough v. Halliburton Logging Serv., Inc., 710 So. 2d 1149 (La. App.), *writ denied*, 720 So. 2d 1217 (La. 1998)	12
Maryland Casualty Co. v. Cardillo, 69 App. D.C. 199, 99 F.2d 432 (1938)	8
Penker Const. Co. v. Cardillo, 73 App. D.C. 168, 118 F.2d 14 (1941)	8
Rupert v. Todd Shipyards Corp., 239 F.2d 273 (9th - Cir. 1956)	7
Rydeen v. Monarch Furniture Co., 240 N.Y. 295, 148 N.E. 527 (1925)	7
Sharp v. Elkins, 616 F. Supp.1561 (W.D. La. 1985)	14
Southern Pac. Co. v. Jensen, 244 U.S. 205 (1917)	6

Cited Authorities

Page

Southern Pac. Co. v. Sheppeard, 112 F.2d 147 (5th Cir. 1940), *aff'g*, 29 F. Supp. 376, 378 (S.D. Tex. 1939) 9

Taylor v. Transocean Terminal Operators, Inc., 785 So. 2d 860 (La. App. 2001) 3

Uglem v. Foss Launch & Tug Co., 541 F.2d 1378 (1976) 7

Verschleiser v. Joseph Stern Son, Inc., 229 N.Y. 192, 128 N.E. 126 (1920) 7

Whittington v. Moore McCormack Lines, Inc., 196 F.2d 295 (2d Cir. 1952) 7

Williams v. Healy-Ball-Greenfield, 15 Ben. Rev. Bd. Serv. 489 (1983) 9

Statutes – Federal:

33 U.S.C. § 901, *et seq.* 1

33 U.S.C. § 902(2) 6, 10, 15

33 U.S.C. § 903(c) 11

33 U.S.C. § 905(a) 3, 5

33 U.S.C. § 905(b) 5

Cited Authorities

Page

43 U.S.C. § 1333 2

43 U.S.C. § 1333(b) 13

Statutes – State:

LSA – R.S. § 23:1032B (West 1998) 10

LSA – R.S. § 23:1035.2 (West 1998) 6

Court Rule:

United States Supreme Court Rule 10(b) 3

Other Authorities:

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UNITED STATES DEPARTMENT OF LABOR, DIVISION OF LONGSHORE AND HARBOR WORKERS' COMPENSATION, SPECIAL FUND ANNUAL ALLOCATION REPORT (2000) 1

INTEREST OF AMICUS CURIAE

Amicus Signal Mutual Indemnity Association, Ltd. (the Association)[1] is an association of approximately 170 companies[2], which are employers subject to the coverage of the Longshore and Harbor Workers' Compensation Act ("LHWCA"), 33 U.S.C. § 901, *et seq*. The Association's members have payrolls subject to the LHWCA totaling about $1.2 billion annually, and the members paid about $33.7 million of the total $358.6 million of compensation and benefits paid under the LHWCA in calendar year 2000.[3]

This brief is submitted on behalf of diverse interests in the nation's maritime industry, including stevedores, ship and barge owners and repairers, marine construction firms, ship agents, surveyors and a variety of other longshore and harbor worker employers covered by the LHWCA. In addition, this brief is submitted on behalf of numerous employers in the offshore energy industry, including service and supply companies covered by the LHWCA pursuant to the

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1. Pursuant to Supreme Court Rule 37.6, amicus curiae states that no counsel for any party to this dispute authored this brief in whole or in part and no person or entity, other than amicus curiae, made any monetary contribution to the preparation of submission of this brief. All parties have consented to the filing of this brief, and letters evidencing their consent are on file with the Office of the Clerk of this Court.

2. Addendum A to this brief lists the individual members of the Association.

3. UNITED STATES DEPARTMENT OF LABOR, DIVISION OF LONGSHORE AND HARBOR WORKERS' COMPENSATION, SPECIAL FUND ANNUAL ALLOCATION REPORT (2000).

Outer Continental Shelf Lands Act, 43 U.S.C. § 1333. The Association has a vital interest in the uniform and correct interpretation and application of the LHWCA.

The Association will address the substantive question presented by the petitioner, whether LHWCA immunity bars a claim for civil damages alleging an LHWCA employer is vicariously liable for injuries sustained when one longshoreman stabbed a co-employee in the course and scope of employment. The decision of the Louisiana Fourth Court of Appeal finding no immunity is a significant departure from prior federal decisions and threatens to upset the balance struck by Congress in requiring LHWCA employers to pay compensation and benefits without fault, in return for immunity from claims for civil damages. This state appellate court decision is in conflict with every federal decision that has ruled in this exclusively federal realm.

The Association will not address the issue of this Honorable Court's jurisdiction. That issue is discussed at length in the petition. Although the Louisiana Fourth Court of Appeal reversed and remanded this case for trial, the Association agrees with the petitioner that this Court has jurisdiction under the exceptions recognized in *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975). The application of those exceptions is particularly appropriate here, because the very purpose of the immunity granted by the LHWCA is to avoid not only civil damages but civil litigation. Requiring LHWCA employers to fully litigate civil actions before obtaining immunity defeats one of the principal purposes of that immunity.

SUMMARY OF ARGUMENT

By judicial alchemy, the Louisiana Fourth Court of Appeal has attempted to transmute a claim that a co-employee stabbed Frank Taylor into a claim that Transocean Terminal Operators, Inc. (TTO), Taylor's employer, committed an "intentional tort." *Taylor v. Transocean Terminal Operators, Inc.*, 785 So. 2d 860, 861 (La. App. 2001). Upon that flawed premise the Louisiana Court of Appeal ruled that such an injury is not subject to compensation under the LHWCA and that the immunity against civil liability granted to TTO by Section 5(a) of the LHWCA, 33 U.S.C. § 905(a) does not apply to the postulated cause of action. Every federal circuit court that has spoken to the issue has ruled to the contrary: a claim by an LHWCA worker for an intentional injury by a co-employee is within the coverage of the LHWCA. Therefore, that is the exclusive liability of TTO. The departure of the Louisiana Fourth Court of Appeal from this settled federal principle is an important consideration for granting the petition for certiorari under Supreme Court Rule 10(b).

The plaintiff's claim is straightforward and simple. Frank Taylor was a longshoreman employed by TTO, an employer unquestionably covered by the LHWCA. Taylor alleged he was stabbed on the job by a co-employee. Taylor explicitly alleged both he and the co-employee were in the course and scope of their employment for TTO. Taylor's ***sole*** claim is that TTO is vicariously liable for the intentional acts of the co-employee. The Louisiana Fourth Circuit Court of Appeal has mistakenly equated that claim with a claim that TTO intentionally injured Taylor. Both federal and state courts recognize that the two types of claims are fundamentally different. An intentional injury by a corporate employer

requires proof of an intentional act by the corporation itself, or by its alter ego. There is no such allegation here. An intentional injury committed by a low-level employee, or even by a supervisory employee, is not an intentional injury by the corporation.

The Louisiana Fourth Court of Appeal has misconceived the nature of Taylor's claim and has misconstrued the LHWCA. Its rulings have introduced two basic errors into this exclusively federal domain: (1) an intentional injury inflicted by one longshoreman against another is not compensable; and (2), a claim of vicarious liability based upon such an injury is an "intentional injury" by an LHWCA employer that is not subject to the immunity granted by the LHWCA. The result of these rulings significantly impact claims under the LHWCA by (1) denying injured employees compensation to which they may be entitled, and (2) denying immunity to employers to which they are entitled.

The Louisiana Court of Appeal's effort to transmute Taylor's claim into gold is as futile as the efforts of the alchemists of old. The petition for certiorari should be granted and these errors should be corrected.

ARGUMENT

I.

AN INTENTIONAL INJURY INFLICTED BY A LONGSHOREMAN AGAINST A CO-EMPLOYEE IS COMPENSABLE UNDER THE LHWCA

It is beyond debate that if the injury alleged by Frank Taylor is compensable under the LHWCA, TTO is immune from civil liability. Section 5(a) of the LHWCA, 33 U.S.C. § 905(b), could not be more clear: "The liability of an employer prescribed in section 904 of this title shall be exclusive and in place of all other liability of such employer. . . ." The central question then is whether an intentional injury inflicted upon one LHWCA employee by a co-employee, arising out of and in the course of their employment[4], is compensable. Federal courts addressing

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4. Taylor himself explicitly alleged that the injury arose out of and in the course of both his employment and that of his assailant, as stated at the outset of the Louisiana appellate court's decision:

> The plaintiff, who is a longshoreman, was stabbed while at work, by a fellow employee. The plaintiff alleges that the stabbing was work-related, i.e., within the course and scope of his and the fellow-employee's employment, and that, therefore, his employer is vicariously liable.

785 So. 2d 860, at 861. Indeed, had the assault not arisen out of the work, there would be no basis for claiming vicarious liability. As discussed *infra*, a claim of vicarious liability is not a claim of intentional injury ***by the employer***. Any "vicarious" liability of TTO is compensable only under the LHWCA.

these uniquely federal issues[5] speak with one voice, and their message leaves no doubt about the error of the Louisiana Court of Appeal's decision.

Subsection 2(2) of the LHWCA defines "injury" in pertinent part as follows:

> The term "injury" means accidental injury or death arising out of and in the course of employment . . . and includes an injury caused by the willful act of a third person directed against an employee because of his employment.

Applying that definition, every federal decision on point recognizes that an intentional injury inflicted by an employee

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5. It is familiar history that the LHWCA was enacted in response to decisions from this Court, beginning with *Southern Pac. Co. v. Jensen*, 244 U.S. 205 (1917), that the states were constitutionally unable to legislate remedies for maritime workers injured over navigable waters. One of the chief concerns impelling those decisions was the need for national uniformity in the law governing maritime workers. Although state courts have jurisdiction to decide issues of LHWCA rights and liabilities, the need for uniformity is paramount and can be achieved only by this Court's review of state court pronouncements. It is important to understand that the Louisiana Court of Appeal's decision is based ***solely*** on its interpretation of the LHWCA. It is not based on any "twilight zone" doctrine. *See Davis v. Department of Labor and Indus. of Washington*, 317 U.S. 249 (1942). The "twilight zone" no longer exists in Louisiana because, effective January 1, 1990, the Louisiana workers' compensation statute exempts from its coverage a claim covered under the LHWCA: "No compensation shall be payable in respect to the disability or death of any employee covered by the . . . Longshoremen's and Harbor Worker's Compensation Act, or any of its extensions. . . ." LSA – R.S. § 23:1035.2 (West 1998).

covered by the LHWCA against a co worker is an "injury" and is compensable under the LHWCA, where the injury arose out of and in the course of employment:

> This court has held that an unexplained attack upon a workman by a stranger, on the employer's premises, arose out of the employment. *Hartford Accident & Indemnity v. Hoage*, 66 App. D.C. 160, 85 F.2d 417. A fortiori if, as here, a quarrel over work leads one employee to strike another, the resulting injury arises out of employment. A long line of cases so hold. (Citations omitted [6]).

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6. Two of the decisions cited by the court pre-date the enactment of the LHWCA in 1927, *Rydeen v. Monarch Furniture Co.*, 240 N.Y. 295, 148 N.E. 527 (1925); and *Verschleiser v. Joseph Stern Son, Inc.*, 229 N.Y. 192, 128 N.E. 126 (1920). Those decisions applied the New York workers' compensation act and held that injuries sustained in fights between co-workers were "accidental" for the viewpoint of the employer and were hence compensable. The LHWCA, enacted in 1927, was patterned after the New York act, *Uglem v. Foss Launch & Tug Co.*, 541 F.2d 1378, 1382 (1976), and New York decisions pre-dating the enactment of the LHWCA are instructive in interpreting the latter statute. *Rupert v. Todd Shipyards Corp.*, 239 F.2d 273, 276 (9th Cir. 1956). Later decisions under New York law are likewise instructive. Before the LHWCA's jurisdiction was extended landward the Second Circuit, applying the New York act, ruled that an assault by one longshoreman against his co-worker was covered by the New York workers' compensation act and, accordingly, the employer was immune from civil liability under the act. *Whittington v. Moore McCormack Lines, Inc.*, 196 F.2d 295, 296 (2d Cir. 1952). Importantly, the court also recognized the distinction between an intentional injury by a co-employee and an intentional injury ***by the employer***:

> Since this assault was not made at the direction or instigation of the employer, the resulting injury was, insofar as the

(Cont'd)

Maryland Casualty Co. v. Cardillo, 69 App. D.C. 199, 99 F.2d 432, 434-35 (1938).

> [I]t makes little difference whether the fighting is by fellow employees or strangers to the work or what is the immediate occasion for the dispute. * * * It is sufficient that the work brings the claimant within the range of peril by requiring his presence there when it strikes. (Footnotes omitted).

Hartford Accident & Indem. Co. v. Cardillo, 72 App. D.C. 52, 112 F.2d 11, 15-16, *cert. denied*, 310 U.S. 649 (1940).

> The finding that "the employment * * * was responsible for the assault" is equivalent to a finding that the injury was "caused by the willful act of a third person directed against an employee because of his employment." The statute makes such an injury compensable. (Footnote omitted).

Penker Const. Co. v. Cardillo, 73 App. D.C. 168, 118 F.2d 14, 15 (1941)).

(Cont'd)

> appellant was concerned, something neither intended nor expected. It was, therefore, "accidental" within the meaning of the Compensation Act. (Citations omitted).

Id. at 296. *Accord, Dillon's Case*, 324 Mass. 102, 85 N.E.2d 69, 71-72 (1949) (injury sustained by longshoreman in a fight with a fellow longshoreman was compensable under the Massachusetts workers' compensation act, even where the claimant struck the first blow).

> If, in the course of employment, a quarrel over work leads one employee to injure another, the injury arises out of the employment within the meaning of the Longshoremen's and Harbor Workers' Compensation Act. (Citations omitted).

Southern Pac. Co. v. Sheppeard, 112 F.2d 147, 148 (5th Cir. 1940), *aff'g*, 29 F. Supp. 376, 378 (S.D. Tex. 1939).

The Benefits Review Board, the administrative agency charged with adjudicating LHWCA claims, also has ruled that injuries sustained during altercations at work are compensable under the LHWCA. *Williams v. Healy-Ball-Greenfield*, 15 Ben. Rev. Bd. Serv. 489, 492 (1983) (fatal shooting of one employee and injury to another employee by co-employee was compensable); *Kielczewski v. Washington Post Co.*, 8 Ben. Rev. Bd. Serv. 428, 431 (1978) (injury sustained during fight arising out of work was compensable).

The Louisiana Court of Appeal did not acknowledge, much less attempt to reconcile its decision with, the foregoing federal decisions, each of which ruled definitively that an injury sustained in a fight between LHWCA employees is compensable under the Act. Instead, the Louisiana Court of Appeal sought guidance from the Louisiana workers' compensation statute and from Louisiana decisions interpreting that statute:

> The notion that a claim for an intentional tort committed by an employer is an exception to a statutory exclusive remedy compensation scheme is familiar in the context of Louisiana worker's compensation law. Louisiana's worker's compensation statute provides that it does not affect

> the liability of the employer for civil liability resulting from an intentional act. La. R. S. 23:1032B.

785 So. 2d at 862.

The Louisiana Court of Appeal's attempt to draw a parallel between the Louisiana workers' compensation statute and the LHWCA was bound to produce error because the two statutory schemes diverge. The Louisiana statute referred to by the Louisiana Court of Appeal provides:

> Nothing in this Chapter shall affect the liability of the employer, of any officer, director, stockholder, partner or employee of such employer or principal to a fine or penalty under any other statute or the liability, civil or criminal, resulting from an intentional act.

LSA -- R.S. 23:1032B (West 1998).

There is no counterpart in the LHWCA. The specific provisions of the LHWCA are directly to the contrary. The federal decisions discussed above make it clear that where one LHWCA employee intentionally injures another, the assailant is viewed as a "third party" within the contemplation of Section 2(2) of the LHWCA. That is not true under Louisiana law because of the explicit language of the statute.

There is another fundamental difference between the Louisiana statute and the LHWCA. Under the Louisiana statute, as construed by Louisiana courts, there is a permissible civil action against the employee inflicting an intentional injury ***and against the employer on vicarious***

liability grounds. *Jackson v. Frisard*, 685 So. 2d 622, 627-28 (La. App.) (intentional injury of one state trooper by another state trooper gave rise to a claim of vicarious liability against the employer, the State of Louisiana), *writ denied*, 689 So. 2d 1386 (La. 1997), and *writ denied*, 689 So. 2d 1387 (La. 1997).

The LHWCA contains only one provision barring compensation where it is otherwise allowable:

> No compensation shall be payable if the injury was occasioned solely by the intoxication of the employee or by the willful intention of the employee to injure or kill himself or another.

Section 3(c), 33 U.S.C. § 903(c). To those two grounds the Louisiana Court of Appeal would add another reason for non-coverage, an intentional injury by a co-employee. That judicial amendment is beyond the power of the Louisiana court or any court.

Moreover, the rationale used by the Louisiana Court of Appeal to create that exception is itself hopelessly flawed. According to the Louisiana Court of Appeal, a claim that one employee intentionally injured another employee, coupled with a claim of vicarious liability of the employer, is equivalent to a claim that the employer intentionally injured the employee. The court's confusion reaches its zenith when it assures its view "is in accord with the mainstream of worker's compensation law." 785 So. 2d at 864. Quite to the contrary, as discussed immediately below, the court's concept of an intentional injury ***by the employer*** is an aberration that has been rejected time and again by the great weight of authority. The authorities rejecting the Louisiana appellate

court's view includes one of the principal authorities the Louisiana Court of Appeal purported to follow, LARSON'S WORKERS' COMPENSATION LAW.

II.

A CLAIM THAT ONE LONGSHOREMAN INJURED A CO-EMPLOYEE IS NOT A CLAIM OF INTENTIONAL INJURY BY THE LHWCA EMPLOYER AND IS WITHIN THE IMMUNITY GRANTED TO THE EMPLOYER BY THE LHWCA

After correctly recognizing that the only claim lodged by Frank Taylor is that he was stabbed by a fellow longshoreman and that TTO is therefore vicariously liable, the Louisiana Court of Appeal mistakenly characterized the claim as alleging "an intentional tort by the employer." 785 So. 2d at 863. Upon that essential mistake the Louisiana Court of Appeal based its decision that the LHWCA does not shield an employer from an "intentional tort" committed by the employer. The Louisiana Court of Appeal believes that its characterization of the claim is within the "mainstream of worker's compensation law," and cites authorities such as LARSON'S WORKERS' COMPENSATION LAW and several federal decisions as supposedly supporting that characterization.[7] Those authorities actually teach the opposite.

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7. Although the Fourth Court of Appeal's views are not within the mainstream of compensation law nationally, the court's views are within the mainstream of Louisiana jurisprudence. In *Malbrough v. Halliburton Logging Serv., Inc.*, 710 So. 2d 1149, 1151-52 (La. App.), *writ denied*, 720 So. 2d 1217 (La. 1998), the court ruled that where one employee was allegedly injured intentionally by another employee on a fixed platform on the outer

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LARSON'S states the correct rule, which is by far the weight of authority:

> Intentional injury inflicted by the employer in person on an employee may be made the subject of a common-law action for damages on the theory that, in such an action, the employer will not be heard to say that such an intentional act was an "accidental" injury and so under the exclusive provisions of the compensation act. The same result may follow when the employer is a corporation and the assailant is, by virtue of control of ownership, in effect the alter ego of the corporation. ***But when the intentional injury is committed by a co-employee the better rule is that an action in damages will not lie against the employer merely because the co-employee occupied supervisory status in relation to the claimant.***

6 Arthur Larson & Lex K. Larson, LARSON'S WORKERS' COMPENSATION LAW, Ch. 103, p. 103-1 (2000) (emphasis added). Taylor has not alleged that TTO, or an alter ego of TTO, or even a supervisory employee of TTO intentionally injured him. The Louisiana Court of Appeal's attempt to

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Continental Shelf (where the LHWCA is applied via the Outer Continental Shelf Lands Act, 43 U.S.C. § 1333(b)), the immunity provided by the LHWCA did not preclude a suit by the injured employee against the co-employee. The Fourth Court of Appeal has taken this erroneous ruling one step further by concluding that a suit against the employer on vicarious liability grounds likewise escapes the immunity of the LHWCA. It is obvious that the Louisiana courts will continue to hold these views until corrected by this Court.

equate a claim of vicarious liability with an intentional injury by TTO is a misconception of elementary legal principles.[8]

One need only examine the federal decisions on which the Louisiana appellate court relies to see the court's illogic. All but one of those decisions involved a claim that ***the employer itself*** committed an intentional act or omission: *Johnson v. Odeco Oil & Gas Co., Inc.*, 679 F. Supp. 604 (E.D. La. 1987) (claim that the corporate employer failed to timely evacuate an offshore oil platform in the face of a hurricane), *aff'd*, 864 F.2d 40 (5th Cir. 1989); *Houston v. Bechtel Assocs. Professional Corp.*, D.C., 522 F. Supp. 1094 (D.D.C. 1981) (claim that the corporate employer failed to provide proper protection from silica dust); *Austin v. Johns-Manville Sales Corp.*, 508 F. Supp. 313 (D. Me. 1981) (claim that the corporate employer failed to warn of the dangers of asbestos dust). None of those decisions involved a claim of an intentional injury inflicted by a co-employee. In the one decision cited by the Louisiana appellate court that did address such a claim, *Sharp v. Elkins*, 616 F. Supp. 1561 (W.D. La. 1985), the court sensibly ruled that a claim of intentional injury ***against the co-employee*** was barred by

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8. It is surpassing odd that the Louisiana Court of Appeal would find comfort in LARSON'S. It is the view of that preeminent authority on workers' compensation that Louisiana jurisprudence is utterly chaotic on "intentional injuries" that escape the bar of workers' compensation immunity. Discussing the aftermath of *Bazley v. Tortorich*, 397 So. 2d 475 (La. 1981), the principal Louisiana decision relied upon by the Fourth Court of Appeal in this case, LARSON'S says: "But subsequent cases extracted from *Bazley* the 'substantial certainty' test of intention, and, as a result, the reports are littered with fact situations, not always successful of course, for some of which 'preposterous' would be too charitable a word." 6 LARSON'S, *supra*, § 103.05[4], pp. 103-30 – 103-31.

the exclusivity provisions of the LHWCA because the alleged injury was compensable. In so ruling, the court explicitly stated that a "third person" within the meaning of Section 2(2) of the LHWCA includes a fellow employee: "Thus, a fellow employee could be deemed a 'third person' under § 902(2). . . ." *Id.* at 1565-66.

As the petitioner has correctly observed, each of the federal decisions cited by the Louisiana Court of Appeal ultimately found no basis for an intentional injury claim. Consequently, any discussion in those cases about whether the LHWCA immunity would apply in a case where the employer ***itself*** intentionally inflicted an injury was a purely academic discussion. There simply is no decision from any federal court applying an exception to the LHWCA's grant of immunity based on an intentional injury by an employer. But, as discussed *supra*, there are several federal decisions, ignored by the Louisiana Court of Appeal, holding that a claim of intentional injury by a co-employee is compensable under the LWHCA.

Even when state law may recognize an intentional injury exception to the exclusivity provided by state workers' compensations statutes, the great majority of courts require the corporate employer itself, or its alter ego, to have inflicted the intentional injury. A perfect example is *Daniels v. Swofford*, 286 S.E.2d 582 (N.C. App. 1982). The plaintiff there claimed the president of the company kicked her in anger. There was no allegation the president was acting as the alter ego of the corporation. Citing LARSON'S, the court found no basis for an intentional injury claim against the employer:

> When the intentional injury is committed by a supervisory employee rather than an employee who is the alter ego of the corporation, the majority rule is that an action in damages will *not* lie against the employer.

Id. at 585 (emphasis in original). The jurisdictions agreeing with that principle are legion and are collected in 6 LARSON'S, Digest to Ch. 103, §§ 103.06D, 103.07D, pp. D103-89 – D103-103.

CONCLUSION

There is no legal basis for finding a claim of intentional injury by TTO, and there is no ground for abrogating the immunity granted to TTO by the LHWCA. The alleged injury to Frank Taylor is compensable under the LHWCA, and TTO's liability under that statute is exclusive. The Court should grant the petitioner's request for review and should reverse the decision of the Louisiana Fourth Court of Appeal and reinstate the judgment of the trial court.

Respectfully submitted,

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APPENDIX

APPENDIX — LIST OF MEMBERS OF SIGNAL MUTUAL INDEMNITY ASSOCIATION LTD, EFFECTIVE OCTOBER 5, 2001

ACADIAN SHIPYARD, INC.
ADMIRAL MARINE CONSTRUCTION CORP.
AMBOY AGGREGATES
AMERICAN GRAIN TRIMMERS INC.
AMERICAN MARITIME SERVICE OF NEW YORK
AMERICAN STEVEDORING, INC.
ANTILLEAN MARINE SHIPPING CORP.
ASSOCIATED NAVAL ARCHITECTS INC.
ATLANTIC CONTAINER SERVICE, INC.
ATLANTIS SUBMARINES HAWAII, L.P.
BAYOU STEEL CORPORATION
BIEHL INTERNATIONAL CORPORATION
BIRDSALL, INC. (TROPICAL SHIPPING & CONSTRUCTION)
BLOUNT/BARKER SHIPBUILDING LLC
BRADFORD MARINE, INC.
BRADY MARINE COMPANY, INC.
BROWARD YACHTS, INC., DBA BROWARD MARINE
CADDELL DRY DOCK & REPAIR CO., INC.
CALLENBERG ENGINEERING, INC.
CANAL BARGE COMPANY, INC.
CHANNEL SHIPYARD INC. AND LYNCHBURG SHIPYARD, INC.
CHRISTINA SERVICE COMPANY
CLEAN WATER OF NEW YORK, INC.
COASTAL DECKING INC.
COASTAL GUNITE CONSTRUCTION CO.
COASTAL MARINE SERVICES, LLC
COASTAL TOWING, INC.
COASTAL TRANSPORTATION, INC.

Appendix

COLUMBIA COASTAL TRANSPORT LLC
COMPLETE DIVING SERVICES, INC.
CORN ISLAND SHIPYARD
CORROSION CONTROL SPECIALISTS, INC.
CROFTON DIVING CORPORATION
CROWLEY MARITIME CORPORATION
D W ALLEN MARINE SERVICES INC.
DAVIS BOAT WORKS, INC. (WAGNER MARITIME)
DELTA MARINE INDUSTRIES, INC.
DENISON HYDRAULICS, INC.
DIX FAIRWAY TERMINALS LLC
DIX INDUSTRIES INC.
DUROCHER DOCK & DREDGE, INC.
EARL INDUSTRIES, LLC (DIGITAL SYSTEMS RESEARCH)
EASTERN TECHNICAL ENTERPRISES
ELLER & COMPANY, INC.
ELLER-ITO STEVEDORING CO., LLC
ENSCO INTERNATIONAL, INC.
EPSILON SYSTEMS SOLUTIONS, INC.
FEDERAL MARINE TERMINALS
FLORIDA STEVEDORING INC. AND FAROVI SHIPPING CORP.
FRASER SHIPYARDS, INC.
GENERAL OFFSHORE CORP.
GENERAL SHIP REPAIR CORPORATION
GLOBAL TERMINAL & CONTAINER SERVICES, INC.
GRASSO CORPORATION, ET AL.
GREAT LAKES ASSOCIATES, INC.
GREAT LAKES DREDGE & DOCK COMPANY
GREAT LAKES TOWING
GREAT LAKES TRANSPORTATION

Appendix

GREYSTAR CORPORATION
GUAM INDUSTRIAL SERVICES, INC.
GULF MARINE REPAIR CORP.
GULF TERMINAL INTERNATIONAL
HARBOR INDUSTRIAL SERVICE CORP.
HAWAII STEVEDORES, INC.
HENDRY CORPORATION
HOUSTON MOORING COMPANY
HOWLAND HOOK TERMINALS, INC.
HUDSON DRYDOCK, INC.
HVIDE MARINE INCORPORATED (SEABULK INTERNATIONAL)
INDUSTRIAL MARINE SERVICE INC.
INTERNATIONAL FLOORING & PROTECTIVE COATING, INC.
INTERNATIONAL SHIP REPAIR & MARINE SERVICE INC.
J WILLIS SMITH & BROTHER, INC.
J. H. STEVEDORING OF DELAWARE
JAMES J. FLANAGAN SHIPPING CORPORATION
JEMM INDUSTRIES, INC.
JONES BOAT YARD
KERNEY BAYONNE SHIP REPAIR, INC. AND FLORIDA MACHINE
KEYSTONE SHIPPING CO.
KINGFISHER MARINE SERVICE, INC.
KIRBY CORPORATION
KNIGHT & CARVER YACHT CENTER
KVAERNER PHILADELPHIA SHIPYARD, INC.
LAMORTE BURNS & CO., INC.
LBC PETROUNITED TERMINALS, INC.
LIGHTSHIP GROUP

LLOYD'S REGISTER OF SHIPPING
LOGISTEC, INC. (MARINE PORT TERMINALS)
LONG BEACH CONTAINER TERMINAL, INC.
LYON SHIPYARD INC.
M. J. HOGAN COMPANY, INC.
M. J. RUDOLPH CORPORATION (TAMPA BAY STEVEDORES)
MACGREGOR (USA) INC.
MADCON CORPORATION
MAERSK, INC.
MAIN INDUSTRIES, INC.
MARINE CONTRACTING CORPORATION
MARINE HYDRAULICS INTERNATIONAL, INC.
MARINE REPAIR SERVICES, INC.
MARINE TRANSPORT LINES, INC.
MARINETTE MARINE CORPORATION
MARITRANS INC.
MASTER BOAT BUILDERS INC.
MASTER MARINE
MATSON TERMINALS (NAVIGATION) CO. INC.
MAY SHIP REPAIR CONTRACTING CORPORATION
MCALLISTER TOWING & TRANSPORTATION COMPANY, INC.
MCGINNIS INC.
MERRILL STEVENS DRYDOCK COMPANY
METAL TRADES, INC.
METRO MACHINE CORPORATION
MID-ATLANTIC COATINGS
MID-FLORIDA FREEZER WAREHOUSES, LTD.
MIDWEST ENERGY RESOURCES COMPANY
MISSOURI DRY DOCK & REPAIR CO.
MOON ENGINEERING COMPANY INC.

MORAN TRANSPORTATION COMPANY
MOTOR SERVICES HUGO STAMP INC.
MPL/SEALAND
NATIONAL CARGO BUREAU, INC.
NATIONAL MAINTENANCE & REPAIR, INC.
NAVIOS SHIP AGENCIES INC.
NEWPORT TERMINALS, LLC
NICHOLS BROTHERS BOAT BUILDERS INC.
NORTH AMERICAN SHIP BUILDING & EDISON CHOUEST OFFSHORE
NOVOLOG BUCKS COUNTY
OCEANIC STEVEDORING COMPANY, INC.
OFFSHORE SPECIALTY FABRICATORS & OFFSHORE EXPRESS
ORION CONSTRUCTION, INC.
P. C. PFEIFFER & CO. INC.
PACIFIC CRANE MAINTENANCE
PACIFIC MARINE MAINTENANCE
PAIGE FLOOR COVERING SPECIALISTS
PARKER TOWING COMPANY, INC.
PARKER DRILLING
PENN TERMINALS, INC. AND PENNSYLVANIA SHIPBUILDING
PETROLEUM SERVICE CORPORATION
PORT AMHERST, LTD
PORT CRANE MAINTENANCE COMPANY LLC
PORT OF MIAMI TERMINAL OPERATING COMPANY, L.C.
PRIDE PETROLEUM SERVICES, INC.
R. O. WHITE & COMPANY, INC.
REINAUER TRANSPORTATION COMPANIES
REX PAINTING, INC.

RLN INDUSTRIES
ROBERT E. DERECKTOR
RODRIGUEZ BOAT BUILDERS, INC.
RUSH JOHNSON ASSOCIATES, INC.
SALMONS DREDGING INC.
SALVAGE ASSOCIATION, LTD.
SCHAEFER STEVEDORING, INC.
SEACOR SMIT INC.
SEAWARD MARINE SERVICES, INC.
SEMCO MARITIME, INC.
SERODINO, INC.
SHORELINE FOUNDATION
SIGNAL CORPORATION
SIMPSON AND BROWN, INC.
SOUTH STEVEDORING, INC.
SOUTHERN STEVEDORING CO. INC.
SOUTHWEST SHIPYARD, L.P.
SPENCER BOAT COMPANY INC.
STEINER SHIPYARD
STEWART CONSTRUCTION CO. INC.
STRACHAN SHIPPING CO.
SUBAQUEOUS SERVICES, INC.
TAMPA BAY SHIPBUILDING & REPAIR CO.
TAMPA PILOTS ASSOCIATION
TECHNICO CORPORATION
TEXAS MOORING INC.
THAMES SHIPYARD
THE FLORIDA DRAWBRIDGE COMPANY
TORCH ENERGY ADVISORS, INC.
TRANSTAR DULUTH MISSABE & IRON RANGE RAILWAY CO.
TRANSTAR MOBILE RIVER TERMINAL COMPANY

TRANSTAR PITTSBURGH & CONNEAUT DOCK CO.
TRANSTAR UNION RAILROAD COMPANY
TRANSTAR USS GREAT LAKES FLEET
TRANSTAR WARRIOR & GULF NAVIGATION CO.
TRANSTAR, INC.
TRICO MARINE OPERATORS
TRITON MARINE CONSTRUCTION CORPORATION
U. S. SHIP MANAGEMENT, INC.
UMS/SEALAND
UNITED STATES MARINE REPAIR
(SOUTHWEST MARINE)
UNIVERSAL MARITIME SERVICE CORPORATION
VAN OMMEREN USA, INC. & OMMEREN
SHIPPING USA, INC.
VIRGINIA INTERNATIONAL TERMINALS, INC.
W. F. MAGANN CORPORATION
WALASHEK INDUSTRIAL & MARINE, INC.
WALASHEK SHIPYARD, INC.
WATERFRONT SERVICES, INC.